

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF       )  
DELMARVA POWER & LIGHT COMPANY FOR AN    )  
INCREASE IN ELECTRIC BASE RATES AND       ) PSC DOCKET NO. 17-0977  
MISCELLANEOUS TARIFF CHANGES            )  
(FILED AUGUST 17, 2017)                    )

**ORDER NO. 9141**

**AND NOW**, this 9<sup>th</sup> day of November, 2017, the Delaware Public Service Commission (the "Commission") determines and orders the following:

**WHEREAS**, on August 17, 2017, Delmarva Power & Light Company ("Delmarva" or the "Company") filed with the Commission an application (the "Application") seeking approval of: (a) an increase in its electric base rates; and (b) miscellaneous tariff changes;

**WHEREAS**, in the Application, Delmarva represented that it was seeking an increase in annual operating revenues of \$24,425,436, an increase of 10.1% in distribution revenues;

**WHEREAS**, pursuant to Order No. 9108 (August 22, 2017), the Commission suspended the proposed rate increase, appointed a hearing examiner to conduct evidentiary hearings on the justness and reasonableness of the Application, and allowed the Company to implement, on October 16, 2017, interim rates intended to produce an annual increase of \$2.5 million in intrastate operating revenues, subject to proration and subject to refund;

**WHEREAS**, on October 13, 2017, pursuant to Commission Order No. 9108, Delmarva filed to implement interim rates on and after October 16, 2017, subject to refund with interest;

**WHEREAS**, immediately thereafter, on October 18, 2017, Delmarva filed the "Supplemental Testimony of Witnesses Ziminsky and McEvoy with Update to Actuals" ("Supplemental Testimony") which included new schedules that effectively changes Delmarva's rates as originally set forth in its August 2017 Application by raising the revenue increase request to \$31,198,425, or \$6,772,989 higher than the Application;

**WHEREAS**, the Delaware Public Service Commission's Staff ("Staff") and the Delaware Division of Public Advocate ("DPA") filed a Motion to Dismiss the Application filed by Delmarva. Staff and the DPA argued that when Delmarva filed the Supplemental Testimony, substantially changing the rates that it had originally requested in the Application, it violated Delaware law by not providing to the Commission the statutorily-required prior written notice under 26 Del. C. § 304(a);

**WHEREAS**, Staff and the DPA also argued that although a public utility may correct erroneous numbers after filing its rate case application (and before it files rebuttal testimony), it may not change numbers in a schedule when such schedule "state[s] a new rate" as set forth in 26 Del. C. § 305;

**WHEREAS**, 26 Del. C. §305 provides that when any public utility files "any schedule stating a new rate," the Commission may, either upon complaint or upon its own initiative, upon

reasonable notice, enter upon a hearing concerning the lawfulness of such rate;

**WHEREAS**, because the moving parties raised important policy issues here that, according to Delaware law, require the Commission to review by hearing, Staff and the DPA urged the Hearing Examiner to request that the Commission directly review and decide the merits of the Motion to Dismiss;

**WHEREAS**, the Hearing Examiner has recommended to the Commission that it rule directly on the Motion to Dismiss pursuant to 26 *Del. C.* § 305; and

**WHEREAS**, after reviewing Staff and the DPA's Motion to Dismiss, Delmarva's response, the Hearing Examiner's request, and the oral arguments of the parties made before us, and deliberating in public session, the Commission makes the following determinations:

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE  
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. The Commission determines that Delmarva's October 18<sup>th</sup> Supplemental Testimony with its revised schedules, increasing the proposed rates from \$24,425,436 to \$31,198,425, a 10% increase in distribution revenues to a 13% increase in distribution revenues, qualifies as filing "any schedule stating a new rate" under 26 *Del. C.* § 305. These attempted modifications failed to meet Delaware law requirements, including the prior notice requirements of 26 *Del. C.* § 304(a) and (b).

2. Because the Company failed to follow the requirements set forth in Delaware law and because the Supplemental Testimony

substantially modified the Application, we dismiss, without prejudice, Delmarva's Application, as supplemented, and order the suspension of the collection of interim rates pending the refilling of Delmarva's new rate application.

3. We also order that the Company file public notice in local newspapers in each of Delaware's three counties so as to notify ratepayers that the Company's application for a rate increase has been dismissed and that no public hearings will be held on this matter (as originally scheduled for February 2018).

4. We further order that any new public notices for Delmarva's re-filed rate case must contain the correct rates, that a new procedural schedule must be published and additional public comments sessions must be held in the future as part of the refilled rate application.

5. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

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Chair

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Commissioner

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Commissioner

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Commissioner

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Commissioner

**ATTEST:**

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Secretary